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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 TYRONE JOHNSON,

11 Plaintiff,

12 v.

13 CITY OF OLYMPIA, et al.,

14 Defendants.  
15

CASE NO. C17-5403-MJP

ORDER ON DEFENDANTS'  
MOTIONS IN LIMINE

16 THIS MATTER comes before the Court on Defendants' Motions in Limine. (Dkt. No.  
17 69.) Having reviewed the Motion, the Response (Dkt. No. 73), the Supplemental Memorandum  
18 (Dkt. No. 90) and all related papers, the Court ORDERS as follows:

19 Motions in Limine A, B, C, D, E, J, R and S are not contested, and are GRANTED.

20 **Motion in Limine F** seeks to exclude evidence or theories not previously disclosed in  
21 discovery or properly supplemented. Without any information regarding the specific evidence or  
22 theories Defendants seek to exclude, the Court cannot preemptively grant this motion.  
23 Defendants' Motion in Limine F is DENIED.  
24

1       **Motion in Limine G** seeks to exclude evidence that Defendants have not called any  
2 particular witness to testify. Without any information regarding which witnesses will or will not  
3 be called to testify, or which witnesses Defendants seek to preclude Plaintiff from mentioning,  
4 the Court cannot preemptively grant this motion. Defendants' Motion in Limine G is DENIED.

5       **Motion in Limine H** seeks to exclude arguments and inferences that a verdict will "send  
6 a message" or "statement" to the government or otherwise effect a political outcome. Plaintiff  
7 notes that punitive damages may be available for his Fourth Amendment claim. Plaintiff may  
8 explain that punitive damages are intended to punish and deter behavior, consistent with the  
9 language of any punitive damages instruction that may be read to the jury. Defendants' Motion  
10 in Limine H is DENIED.

11       **Motion in Limine I** seeks to exclude argument regarding the individual officers'  
12 subjective intent. While "[t]he subjective intent of the law enforcement officer is irrelevant in  
13 determining whether that officer's actions violate the Fourth Amendment," United States v.  
14 Perea-Rey, 680 F.3d 1179, 1187 (9th Cir. 2012), the officers subjective intent is relevant to  
15 punitive damages. See Smith v. Wade, 461 U.S. 30, 56 (1983) ("[A] jury may be permitted to  
16 asses punitive damage in an action under § 1983 when the defendant's conduct is shown to be  
17 motivated by evil motive or intent, or when it involves reckless or callous indifference to the  
18 federally protected rights of others."). Defendants' Motion in Limine L is DENIED.

19       **Motion in Limine K** seeks to exclude evidence of post-incident changes to policy or  
20 practice. Post-incident review and resulting changes to policy or practice are subsequent  
21 remedial measures, inadmissible to prove negligence or culpable conduct under Fed. R. Evid.  
22 407. See also Maddox v. Los Angeles, 72 F.2d 1408, 1417 (9th Cir. 1986) (excluding evidence  
23 of a police department investigation as a subsequent remedial measure in a civil rights suit).

1 However, such evidence may be relevant for another purpose, such as impeachment.

2 Defendants' Motion in Limine K is DENIED.

3 **Motion in Limine L** seeks to preclude experts from providing testimony and opinion on  
4 matters which can be judged by people of ordinary experience and knowledge. While expert  
5 testimony may be excluded where it does not go beyond the expertise of the jury, Beech Aircraft  
6 Corp. v. United States, 51 F.3d 834, 842 (9th Cir. 1995), the Court cannot preemptively grant  
7 this motion. Defendants Motion in Limine L is DENIED.

8 **Motion in Limine M** seeks to preclude experts from providing legal conclusions, and in  
9 particular, from referring to Defendants' actions as "negligent," "excessive," "unreasonable," or  
10 having "violated the constitution." While use of these terms will not be altogether precluded,  
11 "an expert witness cannot give an opinion as to her legal conclusion, i.e., an opinion on the  
12 ultimate issue of law." Hangarter v. Provident Life and Acc. Ins. Co., 373 F.3d 998, 1016 (9th  
13 Cir. 2004). Similarly, "instructing the jury as to the applicable law 'is the distinct and exclusive  
14 province of the court.'" Id. (citation omitted). Defendants' Motion in Limine M is GRANTED.

15 **Motion in Limine N** seeks to preclude experts from basing their opinions on speculation  
16 or conjecture. While expert testimony must relate to "scientific, technical, or other specialized  
17 knowledge" and may not be based upon "unsupported speculation and subjective beliefs,"  
18 Guidroz-Brault v. Missouri Pacific R. Co., 254 F.3d 825, 829 (9th Cir. 2001), the Court cannot  
19 preemptively grant this motion. Defendants Motion in Limine N is DENIED.

20 **Motion in Limine O** seeks to preclude experts from weighing the credibility of  
21 witnesses. While experts will not be permitted to opine on whether a particular witness is or is  
22 not credible, the Court cannot preemptively grant this motion. Defendants Motion in Limine O  
23 is DENIED.

1       **Motion in Limine P** seeks to exclude evidence of prior or subsequent complaints of  
2 misconduct, use of force, or disciplinary actions or reports relating to the officers. Evidence of  
3 “other acts” may be admissible for purposes such as proof of motive, opportunity, intent,  
4 preparation, plan, knowledge, identity, or absence of mistake or accident. Fed. R. Evid. 404(b);  
5 see also Duran v. City of Maywood, 221 F.3d 1127, 1132-33 (9th Cir. 2000). Without any  
6 information regarding the specific evidence Defendants seek to exclude, or the purpose for which  
7 Plaintiffs seek to introduce such evidence, the Court cannot preemptively grant this motion.  
8 Defendants’ Motion in Limine P is DENIED.

9       **Motion in Limine Q** seeks to exclude testimony, evidence, or argument which was not  
10 properly pled or which was dismissed on summary judgment. Plaintiffs agree that it would be  
11 inappropriate to argue a theory or claim that is not properly before the Court. Without any  
12 information regarding the specific evidence Defendants seek to exclude, or the purpose for which  
13 Plaintiffs seek to introduce such evidence, the Court cannot preemptively grant this motion.  
14 Defendants’ Motion in Limine Q is DENIED.

15       Defendants’ Supplemental Memorandum Regarding Plaintiff’s Trial Exhibits (Dkt. No.  
16 90) identifies objections to specific trial exhibits related to Motions in Limine K and P. In  
17 particular, Defendants object to Plaintiffs’ Exhibits 006, 012, 013, 021, 022, 023, 035, 047, 048,  
18 049, 098, 099, 100, 114, and 115 under Fed. R. Evid. 402, 403, and 404(b). After reviewing  
19 these exhibits, the Court finds that each is irrelevant and/or inadmissible, and GRANTS  
20 Defendants’ Motion in Limine with respect to these specific exhibits.

1 The clerk is ordered to provide copies of this order to all counsel.

2 Dated October 12, 2018.

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4 Marsha J. Pechman  
5 United States District Judge  
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